

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3482 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHJI RAMTUJI THAKORE

Versus

SANJAY PRASAD

Appearance:

MS SUBHADRA G PATEL for Petitioner
GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 03/11/1999

ORAL JUDGEMENT

#. Heard learned counsel Miss Subhadra Patel for the petitioner and learned A.G.P. Mr.D.P.Joshi, for the respondent nos.1, 2 and 3.

#. The detention order dtd.21.1.1999 passed by the respondent no.1 Dist. Magistrate Gandhinagar in exercise of power conferred under Sec.3 (1) of Gujarat Prevention

of Anti Social Activity Act 1985 ("PASA" for short) is challenged in the present petition under Article 226 of Constitution of India.

#. The grounds of detention supplied to the petitioner under Sec.9(1) of PASA, copy of which is produced at Annexure B interalia indicate that 13 prohibition cases were registered against the petitioner at Sector No.21 Police Station in between 15.6.96 to 4.10.98. In each of the case, country made liquor has been seized from the possession of the petitioner and all the cases are pending for trial. Furthermore, four witnesses on assurance of anonymity have supplied information about the bootlegging activity of the petitioner. That in consideration of above stated material, the respondent no.1 as detaining authority has come to conclusion that the petitioner is a "bootlegger" within the meaning of Sec.2 (b) of the Act. That resort to general provision of law being insufficient to prevent the petitioner from continuing his anti social activity which prejudicially affect the maintenance of public order, detention order is necessary and as such impugned order is passed.

#. The petitioner has challenged the impugned order on numerous grounds. It is contended that the last registered case against the petitioner is dtd.4.10.98 while impugned order appears to have been passed on 21.1.99. Further more, the anonymous witnesses have not given any date in respect to and incident, nor the copy of the statements supplied to the petitioner bear any date on which the statements are recorded. Thus, there is no nexus between alleged anti-social activity of the petitioner and impugned action of passing of detention order and as such detention order is bad in law.

#. That in the matter of Pradeep Nilkanth Paturkar Vs. Union of India, reported in A.I.R. 1994 SC P.656, it is held that, if a live link between the alleged anti-social activity of the detenu under detention law is snapped, the subjective satisfaction reached by detaining authority being vitiated, detention order is rendered invalid.

#. In the instant case also, impugned order suffers from various infirmities. The copy of statements of anonymous witnesses supplied to the petitioner does not bear any date on which the same appears to have been recorded nor does it indicate any date in respect to the incidents stated by them. That grounds of detention disclose table of prohibition cases registered against the petitioner where except the case registered vide C.R.No.212/98 all

other cases are of the year 1996-97. That the said case was registered on 4.10.98. Thereafter the grounds of detention are devoid of any explanation as to why action was delayed, to prevent the petitioner from continuing his anti-social activity till 21.1.99. Furthermore, despite the service of rule, none of the respondents has filed any affidavit-in-reply. Learned A.G.P. Mr.D.P.Joshi, on instructions after referring to the original file has stated at bar that on account of different criminal cases filed against the petitioner since 1996 time was consumed in collecting material preparing copies for suppling the same. Such explanation on behalf of the respondents can hardly be accepted as requirement of law is that the detaining authority must have explained the delay in taking action while formulating the grounds of detention. In the instant case as the ground of detention are devoid of any explanation for such delayed action, the impugned order is invalid.

#. As the petition succeeds on the above-stated ground alone, it is not necessary to consider other contention raised by the petitioner.

#. On the basis of the aforesaid discussion detention order dtd.21.1.99 passed by the respondent no.1 against the petitioner is hereby quashed and set aside. Petitioner Rameshji Ramtuji Thakor is ordered to be set at liberty forthwith if not required in any other case.

#. Rule to that extent made absolute.

kks